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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NATHAN COHEN et al., Plaintiffs and Appellants, v. VILLA LA JOLLA TOWNHOMES COMMUNITY ASSN., Defendant and Respondent.	D053695 (Super. Ct. No. 37-2007-00064028-CU-OR-CTL)

APPEAL from a judgment and order of the Superior Court of San Diego County, Steven R. Denton, Judge. Affirmed.

Plaintiffs and appellants in propria persona Nathan and Barbara Cohen (together the Cohens), who own a condominium in the Villa La Jolla Townhomes complex in La Jolla, California, appeal (1) the trial court's judgment in favor of defendant Villa La Jolla Townhomes Community Association (Association) on the Cohens' complaint for declaratory relief and damages, and (2) the court's award of attorney fees and costs in

favor of the Association in an amount exceeding $49,000. In their complaint, the Cohens alleged the Association violated the declaration of covenants, conditions and restrictions of the Villa La Jolla Townhomes by unreasonably failing to maintain and improve specified parts of the common areas of the complex.

The Cohens contend that (1) the judgment should be reversed because the court's decision is factually and legally unsupportable, and (2) the court erred in awarding attorney fees to the Association because they, not the Association, were the prevailing parties. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual Background*

The Cohens are the owners of a condominium unit commonly known as 6455 La Jolla Boulevard, No. 117, in the Villa La Jolla Townhomes complex (hereafter sometimes referred to as the complex). The complex, which is a common interest development under the Davis-Sterling Common Interest Development Act (Civ. Code,[1] § 1350 et seq.), consists of 240 condominium units in four buildings. The complex, which was built in the 1960's as an apartment complex, was converted into a condominium complex in the early 1970's. The common areas include patio recreational areas and walking areas between the buildings.

The Association is a homeowners "association" as defined in section 1351, subdivision (a). The Association's articles of incorporation (articles) state in section 1 of

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1 All further statutory references are to the Civil Code unless otherwise specified.

article IV that "[t]he specific and primary purposes for which this Association is organized are to manage, maintain, protect, preserve and improve" the complex. The Association manages the complex under a declaration of covenants, conditions and restrictions (CC&R's). The preamble to the CC&R's states that the CC&R's were "established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness" of the complex and "every part and portion thereof."

The duties of the Association are specified in section 4.04 of the CC&R's, which provides in part:

> "The ASSOCIATION shall have the obligation . . . to perform each of the following duties for the benefit of the OWNERS of Units within PROJECT and for the maintenance and improvement of [the] PROJECT[:] [¶] . . . [¶] C. Operation of Common Areas: [¶] To operate and maintain, or provide for the operation and maintenance of all Common Areas within PROJECT in which it owns an easement for operation and maintenance purposes; and to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair. [¶] D. Exterior Maintenance: [¶] To provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. . . ."

The Association is governed by a board of directors (Board) elected from the membership. The Association's bylaws mandate that the Board exercise the corporate powers of the association in strict accordance with the provisions of the CC&R's, the articles, and the bylaws.

A dispute arose between the Cohens and the Association regarding maintenance of the common areas of the complex. Specifically, the Cohens claimed the Board had

breached its duties under section 4.04 of the CC&R's (discussed, *ante*) by refusing to maintain the hardscape of the common areas (specifically, the north and south pool areas, the brickwork areas, and the concrete areas including the stairs).

B. *Procedural Background*

1. *Mediation*

In December 2006, after the Cohens formally requested resolution of the dispute through alternative dispute resolution, the parties participated in mediation.

2. *Complaint*

In March 2007 the Cohens filed in propria persona a complaint against the Association for declaratory relief and damages. The Cohens alleged the Board "failed to adopt resolutions to provide for the maintenance and improvement of parts of the common areas, specifically: the brick work areas; the concrete and pebbled areas; the concrete stairs and landings; the soiled carpeting of building #1 (corridors #112-133 and #114-119); half-time secretary/office staff; equitable placement of potted plants in various areas of building #1." They also alleged that "[t]he failure of the board of directors to take action was unreasonable in that it caused the further deterioration of the above-mentioned parts of the common areas, depriving [the Cohens] of the normal aesthetic enjoyment of the common areas most adjacent to their unit and throughout the condominium development[;]" such failure was "unreasonable for the further reason that it caused a substantial reduction in the fair market value of [the Cohens'] unit."

With respect to their claim for declaratory relief, the Cohens alleged an actual controversy had arisen in which they maintained they had a right to maintenance and

improvement of the common areas, and the Association and its directors contended they did not have "the duty alleged by [the Cohens]." The Cohens sought "a judicial determination for the failure of the Association and directors to carry out their duty to maintain and improve the common area as directed by Section 4.04C of the CC&R[']s," and a declaration that the Association "has a duty to maintain and improve the common areas with dispatch" and that "the common areas of the [complex] be maintained and improved without further delay."

3. *Case management conference*

In their case management statement, the Cohens requested a nonjury trial, but indicated they were willing to participate in binding judicial or private arbitration. In its statement, the Association requested a jury trial, but indicated it was willing to participate in binding judicial arbitration. The Association acknowledged that the Board "ha[d] already hired contractors to repair some of the items listed in the Complaint."

After the case management conference, in response to the Cohens' inquiry whether the Association was willing to attend a settlement conference or judicial arbitration, the Association's counsel sent a letter to the Cohens stating, "Í conferred with my client and the Association is not willing to attend arbitration or a settlement conference at this time."

4. *Trial*

On April 8, 2008, the court, accompanied by the parties and with their stipulated agreement, visited the complex and inspected the areas that were in dispute. The four-day bench trial commenced that afternoon.

a. *The Cohens' case*

Nathan Cohen (Cohen) testified that he and Barbara Cohen purchased their unit in 1993 and occupied it in early 1994. He was a member of the Board for two years beginning in June 1995, he became a member of the architectural committee in 2001, and chaired that committee until 2002. He also chaired the hardscape subcommittee of the architectural committee. The court admitted photographs of stairs the edges of which Cohen stated were worn down, cracked and in places broken. The stairs also had surface rust stains showing a lack of maintenance of the concrete. The potted plants at the complex were unequally distributed such that Building No. 1 had fewer potted plants than Building No. 3. He had complained to the Association about the unequal distribution of plants since 1999. The architectural committee "stonewall[ed]" his complaints about the plants.

Cohen stated the Board had failed to maintain areas of the common areas on a long-term basis. He presented his own notes from January 2004 indicating the Board was then aware of issues pertaining to hardscape issues. He also presented copies of his notes of a February 2005 meeting of the hardscape subcommittee showing the members agreed to "[c]all in companies to advise on process & products for stairs and hardscape surfaces."

Cohen also presented the minutes of the April 3, 2002 meeting of the architectural committee showing it created the hardscape subcommittee, which included Cohen, to "survey the hard-scape in the [complex] with the goal to prepare a Master Plan for the hard-scape."

On cross-examination, Cohen indicated that the solution to the Board's failure to maintain and repair, which the hardscape subcommittee presented to the Board, was to resurface the hardscape surfaces with an elastomeric coating product called "Miracote." The Board, however, "didn't want to deal with the stairs" and decided to "go with another cheaper product to cover the pool areas, and that's the extent of their maintenance." Cohen acknowledged that during his deposition, he stated he could not demand that the Board use Miracote. The Cohens' stairs were coated with an elastomeric coating product he called "faux Miracote," but the Board decided to leave the landing uncovered and in a state of disrepair.

Gene Pantiga testified he had lived at the complex from 2002 to the present, he was the chair of the architectural committee in 2003 and 2004, and he has not complained to the Board about the condition of the common areas of the complex since he got off the architectural committee. He testified the formation of the hardscape subcommittee was necessary because many areas of the hardscape at the complex needed repair. Many of the concrete areas were cracked and uneven, and the "aggregate" (pebbled) concrete and decking around the pool was particularly "in bad shape." Pantiga also stated that walkways in the "rain forest" area were uneven and could be hazardous to a lot of elderly people who lived at the complex. An epoxy coating had been applied to the pool areas less than a year before. Those areas were again in need of repair, and the brick areas were discolored and chipped and need regrouting.

Debra Dailey, a member of the Board, was the Board's president between 2004 and 2005. She was the chair of the architectural committee between 2000 and 2002. She

testified that on a scale of 1 to 10, with 1 being the worst and 10 being the best, she would rate the condition of the concrete areas in 2000 through 2002 as a 3, the condition of most of the stairs also as a 3, and the condition of the pebbled areas—from January 2002 through the date of Dailey's testimony at trial in this matter—as a "1 to 2."

In May 2005, Dailey, as the president of the Association, sent out a newsletter to the Association's members announcing that the Board was "working on finalizing" several "issues," including "[t]he application of Miracote throughout the property to preserve and enhance the hardscape." Dailey stated that a hardscape covering such as Miracote was being considered for the hardscaped areas of the complex, particularly around the pools, because the decking was "deteriorating to the point where the stones that made up the decking were coming through," and the Board was told that if something was not done, the pools themselves would be compromised. One set of stairs had been coated with an elastomeric coating.

Dailey resigned from the Board following the June 2005 annual meeting. At its February 2006 meeting, the Board requested a third bid for the installation of Miracote. The Board met again in July 2006, but no Association action was taken with respect to the hardscape.

b. *Association's defense*

The Association presented the testimony of three witnesses and several exhibits. Alexandra Corsi, who purchased her unit at the complex in 1997 and had served as a member of the Association's architectural committee, became a member of the Board in June 2007 and was still a Board member. She had served with Cohen on the architectural

committee. One function of the architectural committee was to make "investigatory efforts" with respect to the common areas and provide recommendations to the Board. The architectural committee enlisted the assistance of professional managers, like Pernicano Realty and Management, in performing this function. Corsi explained that the pool area was coated with an elastomeric coating, and other common areas were not, because chlorine from the pool and Jacuzzi had visibly damaged the concrete around the pool, and the architectural committee decided to recommend to the Board that it prioritize this work. In making the recommendation, the architectural committee considered costs and the efficacy of different elastomeric coatings. The architectural committee recommended a product other than Miracote. The contractor hired by the Board did a "very nice" job with respect to the elastomeric coating in the pool and spa areas.

William Baker testified he has owned a condominium at the complex for about 25 years and has been a member of the Board for about 14 years. He described the complex, which is three blocks long and one long block from the ocean, as "one of the premiere spots in La Jolla." In addition to spending about $7,900 per month on gardening and janitorial services, the Association pays for a three-person on-site maintenance crew. He described the hardscape as "fine." Baker compared the elastomeric coating that was applied at the complex with the more expensive Miracote product Cohen preferred, and stated they were "basically the same." He indicated that the Cohens' stairs were coated with an elastomeric coating in order to appease Cohen, but Cohen complained that the landing was not coated.

Aimee Nimitz testified she works for Pernicano Realty and Management and has served as the Association manager for the complex since December 2005. In fiscal year 2008, there was about $650,000 in the operating budget for nonemergency maintenance and repairs, and about $1.6 million in reserve funds for capital improvements, maintenance and repair projects. Nimitz stated that Pernicano presented to the Board three bids for the elastomeric coating project. The Board never considered coating all areas (stairs, bricks and pebbled areas) with elastomeric coating.

5. *Statement of decision*

At the conclusion of the trial, the court issued an oral statement of decision on the record and entered judgment in favor of the Association. The court made both findings of law and findings of fact. With respect to the law, the court found that *Lamden v. La Jolla Shores Clubdominion Homeowners Ass'n* (1999) 21 Cal.4th 249 (*Lamden*) (discussed, *post*) "is a summary of the law which has application to this matter."

After making numerous findings regarding specific facts, the court determined as to the elastomeric coating that the Board "exercised reasonable and appropriate discretion in collection of materials, contractors and area[s] to be coated . . . ." The court also found that one flight of stairs was coated at the Cohens' request, but the landing was excluded at the discretion of the Board in consultation with its elastomeric contractor. The court further found the potted plant distribution was a function of the Association's discretion and was not discriminatory against the Cohens, and the treatment of cracks in the hardscape with fillers "as opposed to completely ripping out and repairing the hardscape" was a reasonable discretionary decision. The court stated that "the cracking appreciated

by the court is consistent with the testimony that the walking surface area minor cracks are not unusual for the type of materials that are used and the age of the project and are the product of normal aging and wear on the materials and subsurface activities and do not present a maintenance or repair issue in its current state."

The court also determined that the Association had "exercised due diligence by professional management of the property" and had established and maintained a board of directors that met regularly, considered all maintenance issues, and complied with all formalities. Maintenance, landscape and janitorial crews, as well as pool, tree trimmer and other specialty contractors performed routine maintenance, and the common areas were maintained in "good, serviceable condition."

The court concluded that "the evidence has not established a lack of maintenance and repair [that] . . . would evidence any unreasonable, wholly arbitrary or capricious failure to address maintenance issues in [the complex]." The court found no evidence of any depreciation in value of the common area or of the Cohens' unit and no evidence of deliberate indifference to any maintenance function at issue in this case. The court also found that "there is no evidentiary basis for a judgment of damages in this matter as there has been no evidence of same," and "the evidence does not support any request for declaratory relief or the interference by this court in connection with the current maintenance issues that are raised in [the Cohens'] complaint." Alluding to *Lamden*, *supra*, 21 Cal.4th 249, which it had previously cited, the court stated it "could not give legal effect to hypersensitivity on the part of any individual within a condominium association, which is the reason for the Supreme Court's rule."

6. *Association's motion for attorney fees and the court's award*

The Association thereafter brought a motion for an award of attorney fees and costs in the amount of $49,655 on the ground it was the prevailing party in this matter. The Cohens opposed the motion, claiming that (1) the Association "grossly inflated the amount of time spent by attorney[s] in preparation for litigation of this matter and . . . needlessly engaged [two] attorneys [in] a representation that clearly only required one attorney"; and (2) the Association "conducted discovery practices in . . . a repetitive manner that needlessly wasted time . . . ."

The court granted the motion under section 1354, finding that the Association was the prevailing party. Specifically, the court found that paragraph 5 of the Cohens' complaint alleged seven failures on the part of the Association regarding: (1) brick work, (2) concrete areas, (3) pebbled areas, (4) concrete stairs and landings, (5) soiled carpeting, (6) inadequate office staff, and (7) placement of potted plants. The court also found that "[e]ven assuming [the Association] took corrective action on the brick work as a result of this litigation that was deemed adequate by [the Cohens], [the Association] still 'practically prevailed' given the many other issues raised by [the Cohens]." The court noted that section 1354, subdivision (c) encompasses lawsuits initiated by homeowners. The court awarded the Association reasonable attorney fees in the amount of $47,225, plus $1,763 in costs. This appeal followed.

DISCUSSION

I. *MOTION TO AUGMENT THE RECORD*

The Cohens have filed an unopposed motion to augment the record that, by this court's order dated January 23, 2009, is to be considered with this appeal. The Cohens request leave to augment the clerk's transcript with copies of four documents: (1) their July 2006 request under Civil Code section 1354 for resolution of their claim that the Board had breached its duties under section 4.04 of the CC&R's by refusing to maintain the hardscape of the common areas (specifically, the north and south pool areas, the brickwork areas, and the concrete areas including the stairs); (2) a redacted copy of a December 15, 2006 confidential memorandum following mediation (confidential memorandum) showing that mediation between the Cohens and the association took place on December 12 of that year; (3) Nathan Cohen's letter dated December 26, 2006, to the National Conflict Resolution Center asserting that the confidential memorandum omitted an agreement by the parties that the brickwork would be restored "as best as practicable" and would receive "re-cementing"; and (4) a letter dated November 9, 2007, from the Association's counsel to the Cohens stating the Association was not willing to attend a settlement conference or judicial arbitration as requested by the Cohens.

The motion to augment is granted under rule 8.155(a) of the California Rules of Court on the ground the four documents were lodged in this case in the superior court, as shown by the supporting declaration of Nathan Cohen, who also states "[t]hese documents are being offered for inclusion of the record on appeal . . . to show that [the Cohens] satisfied the pre-filing requirement of the Davis-Stirling Act, and[/or] . . . to

support [their] arguments (made in the trial court) that an award of fees to [the Association] is 'inequitable' in light of [the Cohens'] mediation efforts."

II. *SUFFICIENCY OF THE EVIDENCE*

The Cohens contend the judgment should be reversed because the court's decision is factually and legally unsupportable. We reject this contention.

A. *Applicable Legal Principles*

Quoting *Environmental Protection Information Center v. Department of Forestry and Fire Prevention* (1996) 43 Cal.App.4th 1011, 1022 (*EPIC*) and adding their own emphasis, the Cohens assert that this court should "apply a standard of 'respectful *nondeference*' " in reviewing the trial court's findings and judgment in favor of the Association. We reject this assertion. The Cohens' reliance on *EPIC* is misplaced because that case involved a state administrative agency's promulgation of an allegedly unauthorized regulation, not a community association board's decisionmaking regarding maintenance and repair of the common areas of a condominium development. (*EPIC*, *supra*, at pp. 1014-1015.)

The applicable standard was announced in *Lamden*, *supra*, 21 Cal.4th 249, in which the California Supreme Court adopted for California courts a "rule of judicial *deference* to community association board decisionmaking" (*Lamden* rule of judicial deference) that applies when owners in common interest developments seek to litigate maintenance or repair decisions entrusted to the discretion of their associations' boards of directors. (*Id*. at pp. 253, 265, italics added.) In *Lamden*, the owner of a unit in a condominium development sued the development's community association for injunctive

and declaratory relief, claiming the association's board of directors diminished the value of her unit by deciding to "spot-treat" rather than fumigate her unit to treat a termite infestation. (*Id*. at pp. 253, 254-256.) Upholding the trial court's judgment in favor of the association, the California Supreme Court held:

> "[W]here a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to *maintain and repair* a development's common areas, *courts should defer to the board's authority and presumed expertise*." (*Id*. at p. 265, italics added.)

Applying this rule to the case before it, the *Lamden* court concluded that the trial court properly deferred to the board's decision to spot-treat the termite infestation rather than fumigate the plaintiff's unit because (1) the termite problem was a matter entrusted to the board's discretion under the governing declaration of restrictions and section 1364;[2] (2) the board exercised discretion clearly within the scope of its authority under the declaration of restrictions and governing statutes "to select among means for discharging its obligation to maintain and repair the Development's common areas occasioned by the presence of wood-destroying pests or organisms"; and (3) the board "acted upon reasonable investigation, in good faith, and in a manner [it] believed was in

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[2] Section 1364, subdivision (a) provides: "Unless otherwise provided in the declaration of a common interest development, *the association is responsible for repairing, replacing, or maintaining the common areas*, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest." (Italics added.)

the best interests" of the association and its members. (*Lamden, supra,* 21 Cal.4th at pp. 264-265.)

Commenting on its rule of judicial deference, the high court in *Lamden* explained that the rule "affords homeowners, community associations, courts and advocates a clear standard for judicial review of discretionary economic decisions by community association boards, mandating a degree of deference to the latter's business judgments sufficient to discourage meritless litigation, yet at the same time without either eviscerating the long-established duty to guard against unreasonable risks to residents' personal safety owed by associations that 'function as a landlord in maintaining the common areas' [citation] or modifying the enforceability of a common interest development's CC&R's [citations]." (*Lamden, supra,* 21 Cal.4th at p. 270.) Rejecting the plaintiff's contention that a rule of judicial deference would insulate community association boards' decisions from judicial review, the *Lamden* court stated that "judicial oversight affords significant protection against overreaching by such boards." (*Id*. at p. 269.) The high court emphasized, however, that " 'anyone who buys a unit in a common interest development with knowledge of its owners association's discretionary power accepts "the risk that the power may be used in a way that benefits the commonality but harms the individual." ' " (*Id*. at p. 269.) In a footnote, the Supreme Court also stated that "[t]o permit one owner to impose her will on all others and in contravention of the governing board's good faith decision would turn the principle of benefit to ' "the commonality but harm [to] the individual" ' [citation] on its head." (*Id*. at p. 270, fn. 10.)

1. *Standard of review*

To the extent the issues raised in this appeal involve the court's resolution of disputed facts or inferences, we apply the substantial evidence standard of review. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 43.) When a ruling is challenged on appeal for lack of substantial evidence, our power begins and ends with a determination of whether there is any substantial evidence, contradicted or uncontradicted, to support the trial court's findings. (*Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1166.) We must view the evidence in the light most favorable to the prevailing party (here the Association), giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*Ibid*.) When two or more inferences can reasonably be deduced from the facts, a reviewing court cannot substitute its deductions for those of the trial court. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

B. *Analysis*

The Cohens challenge the sufficiency of the evidence to support the judgment entered in favor of the Association. Under the applicable *Lamden* rule of judicial deference (discussed, *ante*), which the court cited and applied in rendering its decision in this matter, courts should defer to the authority and presumed expertise of a duly constituted community association board when the board, in discharging an obligation to *maintain or repair* the development's common areas, makes a discretionary decision that is (1) within the scope of its authority under relevant statutes, covenants and restrictions; (2) based upon a reasonable investigation; (3) made in good faith; and (4) made with

regard for the best interests of the community association and its members. (*Lamden*, *supra*, 21 Cal.4th at p. 265.) Applying the *Lamden* rule of judicial deference, we conclude that substantial evidence supports the judgment, and thus that the court properly deferred to the Board's discretion in this matter.

First, substantial evidence shows that the common area maintenance and repair issues in this lawsuit were matters entrusted to the Board's discretion, and the Board exercised that discretion within the scope of its authority. The gravamen of the Cohens' complaint against the Association was that its Board unreasonably failed to carry out its duty to "maintain and improve" the common areas of the complex, particularly the hardscape areas, as directed by section 4.04(C) of the CC&R's. Specifically, the Cohens complained about the Board's action with respect to the "brick work areas," the "concrete and pebbled areas," the "concrete stairs and landings," the "soiled carpeting of building [No.] 1," the replacement of "half-time secretary/office staff," and the "equitable placement of potted plants in various areas of building [No.] 1."

All of these matters were entrusted to the Board's discretion under section 4.04(C) of the CC&R's, which broadly obligates the Association to "operate and maintain, or provide for the operation and maintenance of all Common Areas within [the complex] . . . ; and to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair." Although not mentioned in the complaint, section 4.04(D) of the CC&R's obligates the Board to "provide exterior maintenance upon each Unit . . . as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other

exterior improvements. . . ." The CC&R's do not specify the means or materials the Board must use in discharging its common area maintenance and repair obligations, nor do they provide any guidelines for prioritizing or scheduling the maintenance and repair work in those areas. The prioritizing and timing of such maintenance and repair work, and the choice of means, materials and contractors to be used are left to the broad discretion of the Board. We thus reject the Cohens' contention that "the Association's failure to implement the repairs found to be necessary pursuant to the Board's own investigation is a violation of the [CC&R's] warranting judicial intervention." The Board acted within the scope of its authority in deciding, for example, to use an elastomeric coating product other than the Miracote product that the Cohens preferred, to coat a flight of stairs but not the landing with such a product, and to prioritize and even postpone maintenance and repair work in particular hardscape areas.

Second, substantial evidence shows the Board acted upon reasonable investigation, in good faith, and with regard for the best interests of the community and its members. It is undisputed that the Board acted upon reasonable investigation for purposes of the *Lamden* rule of judicial deference. On appeal, the Cohens acknowledge that "[t]he Board . . . 'reasonably investigated' complaints about the deterioration of the complex's common areas" by "appoint[ing] a hardscape subcommittee to determine the extent of the disrepair and provide estimates of the cost of repair." At trial, Nathan Cohen testified about the function of, and his involvement with, the hardscape subcommittee of the architectural committee. We note that Corsi, a Board member who had served with Cohen on the architectural committee, testified that one of the

architectural committee's functions was to make "investigatory efforts" with respect to the common areas, and provide recommendations to the Board. She also stated that in performing this function, the architectural committee enlisted the assistance of professional managers, like Pernicano Realty and Management.

With respect to the issue of whether the Board acted in good faith and with regard for the best interests of the community and its members, the Cohens presented no evidence that the Board acted arbitrarily or in bad faith in deciding which common area items to maintain and repair. Baker's testimony supports the court's finding that maintenance, landscape and janitorial crews, as well as pool, tree trimmer and other specialty contractors, performed routine maintenance at the complex. Baker also stated that "our landscaping is outstanding" and described the hardscape as "fine" and "very nice."

In *Lamden*, the Supreme Court indicated it was "deferring to the Board's discretion" in that case, which it concluded was "broadly conferred" in the CC&R's. (*Lamden, supra,* 21 Cal.4th at p. 265.) Similarly here, under the applicable *Lamden* rule of judicial deference, we defer to the Board's discretion, which (as discussed, *ante*) was broadly conferred in the CC&R's. Accordingly, we affirm the judgment dismissing the Cohens' complaint against the Association.

III. *ATTORNEY FEES AWARD*

The Cohens also contend the court erred in awarding attorney fees to the Association because (1) their lawsuit "precipitated numerous repairs by the Association," and thus they, and not the Association, were the prevailing parties; and (2) the

Association "rejected [their] attempts at alternative dispute resolution and pressed on to trial," and thus equitable considerations "require that the Association not be rewarded for its intransigence." We reject this contention.

A. *Applicable Legal Principles*

The court granted the Association's motion for attorney fees under section 1354, subdivision (c), which provides: "In an action to enforce the governing documents, the *prevailing party* shall be awarded reasonable attorney's fees and costs." (Italics added.) The term "prevailing party," however, is not defined in that section.

Statutory provisions that authorize an award of attorney fees to the "prevailing party" are not subject to the definition of "prevailing party" in the general costs statute (Code Civ. Proc., § 1032)[3] or Civil Code section 1717, subdivision (b). (See *Heather Farms Homeowners Association. v. Robinson* (1994) 21 Cal.App.4th 1568, 1572-1573; *Galan v. Wolfriver Holding Corp.* (2000) 80 Cal.App.4th 1124, 1128-1129.) Rather, for purposes of section 1354, subdivision (c), a trial court has discretion to determine which party "prevailed on a practical level," and the court's ruling should be affirmed on appeal absent an abuse of discretion. (*Heather Farms, supra,* 21 Cal.App.4th at p. 1574.)

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3 Code of Civil Procedure section 1032, subdivision (a)(4) provides in part that " '[p]revailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant."

B. *Analysis*

The court found that the Association was the "prevailing party" for purposes of section 1354, subdivision (c). We conclude the court did not abuse its legal discretion.

As a practical matter, in light of the clear applicability of the Association's *Lamden* defense, the Association was the prevailing party for purposes of section 1354, subdivision (c), because it obtained a judgment of dismissal based on that defense. As a matter of policy and equity, the attorney fee award should be affirmed because, at the time the Cohens filed their complaint in March of 2007, the Supreme Court's 1999 *Lamden* rule of judicial deference clearly applied to owners in common interest developments, like the Cohens, seeking to litigate maintenance or repair decisions entrusted to the discretion of their associations' boards of directors. (*Lamden*, *supra*, 21 Cal.4th at pp. 253, 265.) In prosecuting their claims for damages and declaratory relief, the Cohens disregarded the *Lamden* rule of judicial deference and litigated maintenance and repair decisions entrusted to the discretion of the Board under the provisions of the CC&R's. The Cohens complain that the Association "insisted on resorting to expensive litigation," but the parties' joint trial readiness conference report shows that the Cohens disputed the Association's legitimate defense that the *Lamden* rule of judicial deference "vitiate[d]" the Cohens' claims. Even on appeal, the Cohens cite *Lamden*, but then, in reliance on inapposite case law (i.e., *EPIC*, *supra*, 43 Cal.App.4th 1011 (discussed, *ante*)), maintain that the *Lamden* rule of judicial deference does not apply and that this court should apply a standard of "respectful *nondeference*" in reviewing the trial court's findings and judgment in favor of the Association. Furthermore, without citation to

authority, the Cohens insist that the *Lamden* rule of judicial deference does not apply in this case because "the Association's repairs were not 'ordinary.' " They assert the contemplated repairs were "extraordinary repairs" that were "necessitated by the lack of ordinary maintenance over the years" and were "intended to rebuild and reconstruct hardscape structures that were in serious disrepair as the result of more than 40 years of neglect." These assertions are unavailing. In crafting the *Lamden* rule of judicial deference, the California Supreme Court made no distinction between "ordinary" repairs and "extraordinary" repairs. (See *Lamden, supra,* 21 Cal.4th at p. 265.)

We note that the court reduced the Association's attorney fees request by $2,430, finding that it was "unreasonably duplicative" for the Association to "utilize two attorneys at trial." We also note that the Cohens do not contest on appeal the amount of the award of reasonable attorney fees. We affirm the award.

DISPOSITION

The judgment of dismissal and the attorney fees award are affirmed. The Association is awarded its costs on appeal.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.